IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARRY DAWSON, INDIVIDUALLY AND ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED, PLAINTIFFS	:	CIVIL ACTION NO. 00-6171
v.	:	
DOVENMUEHLE MORTGAGE, INC., AND JOHN DOES ONE THROUGH FIFTY, DEFENDANTS	:	

MEMORANDUM

Giles, C.J. March _____, 2002

Larry Dawson, on behalf of himself and others similarly situated, files this action against Dovenmuehle Mortgage, Inc. ("DMI"), the mortgage servicing company which services Dawson's mortgage and John Does One through Fifty ("Does"), certain individuals, partnerships, corporate entities, attorneys, and other persons who may be involved in the alleged scheme, but whose identity and location are not yet known to plaintiff. He alleges violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, breach of contract, unfair trade practices, misrepresentation, and fraudulent misrepresentation, and demanding statutory and compensatory damages, disgorgement by DMI of any sums collected, attorneys' and experts' fees, and injunctive relief.

The court now considers DMI's Motion to Dismiss the First Amended Class Action Complaint Pursuant to Rule 12(b)(6). For the reasons that follow, the motion is granted in part

and denied in part.

I. BACKGROUND

Facts Pertaining to Named Plaintiff

Plaintiff is a mortgagor of a mortgage serviced by DMI, who is a subservicer for Argo Federal Savings Bank ("Argo" or "Mortgagee"). He brings this as a class action on behalf of himself and all mortgagors whose mortgages were or are serviced or subserviced by DMI.[1]

Plaintiff owns 1902 Lenox Street, Harrisburg, Pennsylvania (the "Property"). On June 30, 1998, he borrowed $50,400 from Argo Federal Savings Bank ("Argo") and gave a note for $50,400 (the "Note") and the mortgage on the property. The mortgage is on a form approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and is used as a matter of course throughout the United States.

On August 25, 1999, plaintiff filed for bankruptcy protection under 11 U.S.C. Chapter 7. (DMI's Mem. in Supp. of Mot. to Dismiss at 4.) Attorneys representing DMI as a servicer for Argo entered their appearance in plaintiff's bankruptcy proceeding. Plaintiff alleges that "the only activity by or for and on behalf of DMI was the filing of the entry of appearance." (Pls. Resp. to Mot. to Dismiss at 3.) DMI categorizes its attorneys' fees as incurred in monitoring plaintiff's bankruptcy proceedings. Through the bankruptcy proceedings, plaintiff was not allowed to avoid the mortgage and kept paying DMI principal and interest in accordance with the

[1]A mortgage servicer is defined by 12 U.S.C. § 2605(i)(2) as a person responsible for servicing of a loan, including the person who makes or holds a loan if such person also services the loan.

terms of the Note. (Id.) The bankruptcy proceeding was concluded with plaintiff being discharged from certain debts. The mortgage remained unaffected. Plaintiff's personal indebtedness under the Note was discharged, but the mortgage lien remained intact. Plaintiff has continued to make payments to DMI in accordance with the terms of the Note after discharge. (Id.)

By letter dated September 10, 1999, DMI billed plaintiff $450.00 for the cost of DMI's attorney's fees incurred in relation to the bankruptcy proceeding. (Amended Compl. ¶ 12b(10); DMI's Mem. in Supp. of Mot. to Dismiss at 4.) On or about May 10, 2000, after plaintiff protested the charge, DMI's attorneys advised him by letter that DMI would not seek recovery of the $450. However, on October 3, 2000, DMI again billed for the same $450 charge. He refused to pay and filed this action.

Subsequent to filing its motion to dismiss, DMI filed an affidavit on March 20, 2002, stating that the October 3, 2000 billing was sent erroneously through a clerical error, that the necessary correction had been made, and certifying that the $450 charge has been waived. Plaintiff has responded, asserting that the $450 charge was not a clerical error at all but clear evidence of DMI's instilled system of charging him and others like him for attorneys' fees unlawfully. For purposes of DMI's motion to dismiss, this court must view all the facts in the light most favorable to plaintiff.

II. DISCUSSION

When reviewing a motion to dismiss, the court must accept as true all material allegations of the complaint and must construe the complaint in favor of the non-moving party. Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint and drawing all reasonable inferences in the non-moving party's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint. Id. (citing ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994)).

DMI's position is that plaintiff's mortgage lien was not discharged in plaintiff's chapter 7 bankruptcy proceeding and it is entitled to recover any attorneys' fees that were necessary to be incurred in accordance with the Note and mortgage and to have those fees secured against the property just as it is entitled to recover the principal and interest on the loan pursuant to the debt instruments.

DMI contends that the legal fees are expressly authorized by language in the mortgage. (DMI's Mem. in Supp. of Mot. to Dismiss at 1.)

Paragraph 7 of the mortgage provides:

> If...there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy...), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights to the property...Lender's actions may include...appearing in court , [and] paying reasonable attorney's fees...
>
> Any amount disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

(emphasis added).

Lastly, DMI contends that adding the attorneys' fees charge to the secured debt without bankruptcy court approval was entirely lawful and in compliance with paragraph 7 of the mortgage.

A. Jurisdiction under Bankruptcy Code

Plaintiff asserts jurisdiction under 11 U.S.C. §§ 503 and 506(b) of the Bankruptcy Code, which requires that secured creditors make application for and achieve approval by the bankruptcy court for attorneys' fees and costs to be paid by debtors. DMI argues that plaintiff has no jurisdiction under the Bankruptcy Code, because the mortgage survived the bankruptcy proceedings, intact, no proof of claim was needed to be filed DMI, and the attorneys' fees followed the mortgage.

1. Section 506

Section 506(d) of the Bankruptcy Code provides:

> To the extent that a lien secures a claim against property of the debtor that is not an allowed secured claim, such lien is void, unless -
>
> (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
>
> (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

11 U.S.C. § 506(d) (emphasis added).[2]

[2]The provisions of Sections 502(b)(5) and 502(e) have no relationship to this case.

In a Chapter 7 bankruptcy proceeding, whether or not a creditor files a proof of claim, unless the property secured by a lien is sold during the proceeding or the lien is otherwise made subject to an order of the bankruptcy court modifying the lien in some fashion, the lien and the claim are secured thereby as an in rem claim and survive the bankruptcy proceeding, intact. See Dewsnup v. Timm, 502 U.S. 410, 417 (1992) (interpreting § 506(d) to prohibit the reduction of the amount secured by a creditor's lien in mortgaged property in Chapter 7 proceedings.); In re Be-Mac Transport Co., Inc. 83 F.3d 1020, 1025 (8th Cir. 1996) (holding that a secured creditor need not file a claim in a bankruptcy proceeding to preserve its lien, but rather may ignore the bankruptcy proceeding and look to the lien for satisfaction of its debt).

Plaintiff asserts that application to and approval of the bankruptcy court is a necessary prerequisite for a creditor to obtain attorneys' fees, even when provision for reasonable attorneys' fees is made in the debt instrument. Plaintiff relies on Section 506(b), which provides,

> To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

11 U.S.C. § 506(b). Plaintiff points out that Section 506(b) has been held by some courts to require that a bankruptcy court specifically approve the attorneys' fees that the secured creditor seeks to collect. See Rivermeadows Assoc. Ltd. v. Falcey, 185 F.3d 875 (Table) (10th Cir. 1999).

Plaintiff is incorrect. Section 506(d) clearly states, and has been uniformly interpreted as providing, that creditors holding secured liens do not have to petition the bankruptcy court to obtain reasonable attorneys' fees if such fees are authorized by the lien agreement. Since DMI

sought only fees against the lien, that is, an in rem claim, it was not necessary for it to apply to the bankruptcy court for a determination of whether its attorneys' fees were reasonable. Further, in Rivermeadows, as well as every other supplementary authority plaintiff has submitted, the bankruptcy creditor had filed a proof of claim. See Rivermeadows, 185 F.3d at *1. Such is consistent with Section 506(b), which by its terms addresses only "allowed secured claims," that is, claims that have been made subject to bankruptcy court determination because a proof of claim has been filed. See 11 U.S.C. §§ 501, 502. DMI did not file a proof of claim in the plaintiff's bankruptcy proceeding. Therefore, DMI's security interest and its debt instruments did not come within bankruptcy court's jurisdiction through Section 506(b).

2. Section 503

Plaintiff also asserts that jurisdiction exists under Section 503 of the Bankruptcy Code. That provides, inter alia, "After notice and a hearing, there shall be allowed, administrative expenses. . . including . . . compensation and reimbursement awarded under section 330(a) of this title . . . ." 11 U.S.C. § 503(b)(2). Section 330 (a) provides, in pertinent part,

> After notice to the parties in interest and the United States Trustee and a hearing. . . the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103-
>
> (1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and
>
> (2) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a).

In short, plaintiff contends that Section 503 provides that professionals hired by the trustee or debtor-in-possession in a bankruptcy proceeding may be compensated as an administrative expense, upon, but only upon, court approval after notice and a hearing.

This compensation scheme is inapposite as an exception to Section 506(d) for two reasons. First, defendant is not seeking attorneys' fees as an administrative expense for a service that assisted the bankruptcy court or the bankruptcy proceedings - a priority claim against all assets of a debtor's estate - but rather solely as a claim under the terms of the lien against the property. Compliance with Section 503 is necessary only for the former. See, e.g., In Re Lissner Corp., 119 B.R. 143 (Bankr. N.D. Ill. 1990) (administrative expenses given priority status over all other unsecured claims); Matter of Century Brass Products, Inc., 107 B.R. 8 (Bankr. D. Conn. 1989) (administrative expense not only is allowance against estate, but also enjoys priority over other claims).

Second, by its terms, Section 503 governs compensation of the trustee's or debtor-in possession's professionals, only, as opposed to compensation of a professional hired by a creditor who is not working on behalf of the estate. See Cosby v. Cosby, 33 B.R. 949, 952 n.5 (Bankr. E.D. Pa. 1983) ("We do not . . . construe counsel for a secured creditor as being a 'functionary of the bankruptcy court.'"). The Cosby court, finding Sections 503 and 330 inapposite, turned to the mortgage as the controlling instrument. Id. at 951-52. In Cosby, the agreement provided only for a specific percentage, id. at 950, which accounted for the substantive difference between the instrument and the statute in that case; here, however, the only difference is one of jurisdiction.

"[W]hen the rights of a holder of a claim secured only by a security interest in the debtors' principal residence [as is in this case, see Amend. Compl. ¶ 12(b)(2)] . . . include a right to compensation for attorneys' fees, then section 1322(b)(2) of the Code preserves that right to compensation for attorneys' fees." Cosby, 33 B.R. at 951. That Section provides:

> (b) Subject to subsections (a) and (c) of this section, the plan may –
> ***
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

11 U.S.C. § 1322(b)(2). Both plaintiff and DMI are bound by the terms of their debt instruments. Whether the $450 fee was unreasonable in amount is a separate question. That question must be asked and answered under contract law and not the Bankruptcy Code.[3]

B. Jurisdiction Under the FDCPA

DMI further argues that Count I of plaintiff's complaint, which alleges a claim under the

[3]Plaintiff also argues that FRBP 2016(a) establishes that a secured creditor seeking payment of or reimbursement for bankruptcy-related attorneys' fees and costs must apply to the bankruptcy court. This argument, asserted in plaintiff's response brief, was not averred as a basis for jurisdiction in the amended complaint. Plaintiff argues that this rule creates a dual obligation-the obligation of the creditor to make the application for approval of fees and the duty of the bankruptcy court to approve or disapprove the application. In re Horn & Hardart Baking Co., 30 B.R. 938, 944 (Bankr. E.D. Pa. 1983).

Plaintiff is incorrect. The Bankruptcy Rules of Procedure cannot provide a basis for jurisdiction, but merely provide the procedural mechanism for obtaining court approval for attorneys' fees in those situations where they are otherwise authorized by statute. See Raymark Industries v. Baron, 1997 WL 359333, at *8 (E.D. Pa. 1997) (rejecting debtor-plaintiff's attempt to bootstrap a violation of a [different] bankruptcy rule into a subsequent district court claim).

FDCPA, is inapposite. In paragraphs 17 and 18 of the Amended Complaint, plaintiff avers that DMI violated and continues to violate Section 1692f(1) of the FDCPA, which prohibits debt collectors from attempting to collect an amount which is not authorized under the contract creating the debt. The statute reads, in pertinent part:

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. . . . [T]he following conduct is a violation of this section:
>
> > (1) The collection of any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

15 U.S.C. § 1692f(1). DMI argues that the FDCPA applies only to "debt collectors," and that DMI is not a debt collector as defined in the statute.

A loan servicer, someone who services but does not own the debt, is not a "debt collector" if the servicer begins servicing of the loan before default. The statutory definition of "debt collector" excludes: "Any person collecting or attempting to collect any debt owed, due or asserted to be owed or due another to the extent such activity...(iii) concerns a debt which was not in default at the time it was obtained by such person...15 U.S.C. § 1692(a)(6)(F)(iii); thus, the statute applies to a mortgage servicing company only where the mortgage at issue was already in default at the time when servicing began. Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985). Since plaintiff alleges that he was always current with his mortgage obligation (Amended Complaint ¶ 12(B)(4)), and that the assignment occurred before any default, the statute does not apply.[4]

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[4] Plaintiff further argues that DMI is not a servicer, but a subservicer of the loan, which, he contends, falls under the definition of "debt collector." This is also incorrect. Plaintiff relies on a definition of "servicer" in 12 U.S.C. § 2605(i)(2), Real Estate Settlement

Further, the language in paragraph 7 of the instrument cannot be in violation of 15 U.S.C. § 1692f(l), since in interpreting the language in paragraph 7 of the mortgage courts have concluded that the language permits a mortgagee to charge a mortgagor for the mortgagee's attorneys' fees and other expenses incurred during the mortgagor's bankruptcy. See In re Trabal, 254 B.R. 99, 103 (Bankr. D.N.J. 2000).

C. Breach of Contract Claim

DMI argues that Count II should be dismissed because the charge for attorneys' fees was contractually authorized by paragraph 7 of the mortgage. It claims that the fee was reasonable because the filing of an appearance in plaintiff's bankruptcy was necessary to preserve its legal interests, and was totally consistent with the language with paragraph 7 since bankruptcy is "a legal proceeding that may significantly affect Lender's rights in the Property." Par. 7. While plaintiff does not dispute that the entry of appearance was necessary, he nevertheless contends

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Procedures, regarding the servicing of mortgage loans and administration of escrow accounts. Section 2605(i)(2) states, in pertinent part, "The term 'servicer' means the person responsible for servicing of a loan (including the person who makes or holds a loan if such a person also services the loan). . . ." Not only is this section from a different title of the U.S. Code and therefore inapposite to the FDCPA, it also happens to be consistent with defendant's argument that there is no meaningful distinction between servicer and subservicer in either statute. The parenthetical in Section 2605(i)(2) clearly states that servicers that are holders of the loan are also included in the definition, necessarily implying that servicers that are not loan holders, that is, subservicers, are servicers under the statute.

Moreover, with respect to the FDCPA, Section 1692a(6)(F)(iii) draws no distinction between servicers and subservicers. Indeed, neither term is used in the Act. The exception is for "any person collecting . . . any debt owed. . .another. . . ." Under this language, it makes no difference how many steps there are between the person collecting and the person owed the debt, as long as the debt was not in default when the assignment occurred. See, e.g., Perry, 756 F.2d at 1208 (neither mortgage servicing company nor its assignee were "debt collectors" under § 1692a).

that the $450 charge was unreasonable and violative of the reasonable attorneys' fee provision of paragraph 7. This is a question of fact that cannot be decided in a motion to dismiss.

DMI further argues that the breach of contract claim is defective because it is merely the agent of Argo. DMI asserts that an agent who acts on behalf of its principal under a contract is not liable to the other party to the contract if that contract is breached by the agent's actions. It argues that Argo, as the principal, is the real party in interest and that DMI is improperly sued. This is an incorrect statement of law.

While a principal may be responsible for the acts of its agent, the agent is held accountable for its own acts. See generally Cosmas v. Bloomingdale Bros., Inc., 660 A.2d 83 (Pa. Super. 1995) (agent who does an act otherwise a tort is not relieved from liability by fact that he acted at command of principal or on account of principal); Buchanan v. Delaware Valley News, 571 F. Supp. 868 (E.D. Pa. 1983) (agent of corporation is personally liable in civil action for its tortious conduct even though agent acts on behalf of principal and in fact derives no benefit from its activities). Further, it has not been established that DMI is Argo's agent, as opposed to its assignee, but it is clear that this is not an issue that can be resolved in a motion to dismiss.

D. UTPCPL, Fraudulent Misrepresentation, and Negligent Misrepresentation

DMI argues that plaintiff has not stated sufficiently a claim under the UTPCPL, 73 P.S. §

201-2(4)(xxi),[5] because plaintiff has failed to allege all the elements of common law fraud, including misrepresentation, reliance, causation, and damages. See Booze v. Allstate Ins. Co., 750 A.2d 877, 880 (Pa. Super. 2000) ("In order to state a claim under the catchall provision of the Unfair Trade Practices and Consumer Protection Law, a plaintiff must prove the elements of common law fraud."); Fisher v. Aetna Life Ins. & Annuity Co., 39 F. Supp. 2d 508, 511 n.1 (M.D. Pa. 1998), aff'd without op., 176 F.3d 472 (3d Cir.), cert. denied, 528 U.S. 816 (1999) ("for plaintiffs to maintain their claim for consumer fraud under the [UTPCPL], they must also prove the five elements of a misrepresentation claim"). Thus, in order to defeat a defendant's motion to dismiss, a plaintiff must aver sufficient allegations in its pleadings which, if proven, could lead a jury to find clear and convincing proof of fraud. Fisher, 39 F. Supp.2d at 511-12 (applying standard in context of summary judgment) (citing Moffatt Enterprises, Inc. v. Borden, Inc., 807 F.2d 1169, 1174-75 (3d Cir. 1986)). This test is equally applicable under the UTPCPL and Pennsylvania's common law tort of fraudulent misrepresentation.[6]

Under Pennsylvania law, to establish a claim of fraudulent misrepresentation, plaintiffs

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[5]"Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. § 201-2(4)(xxi).

[6]The Bankruptcy Court of the Eastern District of Pennsylvania has cast doubt on whether the 1996 amendment to the UTPCPL, which added "or deceptive" to fraudulent conduct, still requires proof of common law fraud. See Rodriguez v. Mellon Bank, N.A., 263 B.R. 82 (Bankr. E.D. Pa.1998); In re Patterson, 263 B.R. 82 (Bankr. E.D. Pa. 2001). This issue has not yet been addressed by the Supreme Court of Pennsylvania. The bankruptcy court decisions have disregarded the post-amendment precedent of the Pennsylvania Superior Court, and has predicted that the Pennsylvania Supreme Court will find the standard to be mitigated. It is noted that Fisher v. Aetna, decided in 1998 and affirmed without opinion by the third circuit, follows the earlier requirements before the amendment. Because this court finds that plaintiff's complaint pleads sufficiently according to the earlier, stricter standard, it need not address which standard is appropriate at this time.

must establish by clear and convincing evidence: (1) a false representation of an existing fact or a non-privileged failure to disclose; (2) materiality, unless the misrepresentation is intentional or involves a non-privileged failure to disclose; (3) scienter, which may be either actual knowledge or reckless indifference to the truth; (4) justifiable reliance on the misrepresentation, so that the exercise of common prudence or diligence could not have ascertained the truth; and (5) damages as a proximate result. Fisher, 39 F. Supp.2d. at 511 (citing Wittekamp v. Gulf & Western, Inc., 991 F.2d 1137, 1142 (3d Cir. 1993)).

Elements 1, 2, 4, and 5 of the above test are also applicable to Pennsylvania's common law tort of negligent misrepresentation. Gibbs v. Ernst, 647 A.2d 882, 890 (Pa. 1994).

The court finds that plaintiff has sufficiently stated claims for violation of the UTPCPL, and therefore fraudulent misrepresentation and negligent misrepresentation. Plaintiff has alleged that "DMI intentionally mischaracterizes these illegal fees in documentation provided to the debtors in the form of invoices, statements, loan activity analysis, payoff statements, and the like, with false statements intended to misrepresent, to mask, the actual purpose or basis of the charge for attorney's fees." (Amended Compl. ¶ 8.) Plaintiff has also averred that this misrepresentation was intentional: "Incredibly, DMI has intentionally attempted to mask the purpose of the debit entry on the plaintiff's account setting forth the charge for these attorney's fees." (Amended Compl. ¶ 12b(13).) Further, plaintiff has alleged reliance on these false purposes, including the defendant's purported waiver of the $450 fee, which to date plaintiff has not paid, only to see it turn up again under a different classification. (Amended Compl. ¶ 12b(11).) Finally, plaintiff has alleged causation and damages. (Amended Compl. ¶¶ 37-40.) Accordingly, plaintiff's claims for violation of UTPCPL, fraudulent misrepresentation, and

negligent misrepresentation survive the motion to dismiss.

E. Supplemental Jurisdiction

When a district court has dismissed all federal claims within a complaint, and diversity jurisdiction does not exist over the remaining state statutory and/or common law claims, the court has discretion to retain, dismiss, or remand the remaining state law claims. 28 U.S.C. §1367.

In deciding whether to exert supplemental jurisdiction over remaining state claims, courts should weigh convenience and fairness to both parties, as well as the interests of judicial economy. Shanaghan v. Cahill, 58 F.3d 106, 112 (4th Cir. 1995). In doing so, courts have considered the extent to which the state law issue in question has been settled by the state courts, see In re Conklin, 946 F.2d 306, 322 (4th Cir. 1991), as well as the extent to which a plaintiff might suffer serious prejudice from the dismissal of her action due to state limitations bars to refiling in state court, see Shanaghan, 58 F.3d at 112. Some courts have found it important to consider whether the amount claimed in the complaint was made in good faith, or whether plaintiff was consciously relying on flimsy grounds to get into federal court. Id. (citing Rosado v. Wyman, 397 U.S. 397, 404-05 (1970) (distinguishing initial "insubstantiality" from subsequent "mootness")). Finally, courts should account for the amount of time and energy that has already been expended and decide whether it might be more efficient simply to retain jurisdiction.

Considerations of judicial economy, as well as convenience to the parties, prevail in the exercise of supplemental jurisdiction. As this is filed as a class action, potentially involving

plaintiffs and defendants from many states, it will likely be more convenient for the majority of the parties to remain in federal court. Resolution of plaintiff's breach of contract claim will require a determination of what constitutes a reasonable attorney's fee under paragraph 7 of the mortgage, which, in turn, may require inquiry into bankruptcy law. Therefore, this court will retain supplemental jurisdiction under 28 U.S.C. § 1367.

III. CONCLUSION

For the foregoing reasons, Defendant DMI's Motion to Dismiss the First Amended Class Action Complaint Pursuant to Rule 12(b)(6) is granted in part, and denied in part.

An appropriate order follows.